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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Upper Columbia River Site

Teck Cominco Metals, Ltd.
Trail, British Columbia,

RESPONDENT

Proceeding Under Sections 104, 122(a),
and 122(d)(3) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended,
42 U.S.C §§ 9604, 9622(a), 9622(d)(3).

U.S. EPA Docket and 122(d)(3)
Number _____

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent (AOC) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Teck Cominco Metals Ltd. (Respondent). The AOC concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a Remedial Investigation and Feasibility Study (RI/FS) for

1 the Upper Columbia River Site located in the state of Washington as well as past response costs.

2 3 II. JURISDICTION

4 2. This AOC is issued under the authority vested in the President of the United States
5 by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3)
7 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by
8 Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to
9 Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority
10 has been redelegated by the Regional Administrator to the Region 10 Director, Environmental
11 Cleanup Office (ECL) , and further delegated to ECL Unit Managers.

12 3. The Respondent agrees to undertake all actions required by the terms and
13 conditions of this AOC. In any action by EPA or the United States to enforce the terms of this AOC,
14 Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional
15 Administrator to issue or enforce this AOC, and agrees not to contest the validity of this Order or its
16 terms.

17 18 III. PARTIES BOUND

19 4. This AOC shall apply to and be binding upon EPA and shall be binding upon the
20 Respondent, its agents, successors, assigns, officers, directors, and principals. Respondent is jointly
21 and severally responsible for carrying out all actions required of it by this AOC. The signatories to
22 this AOC certify that they are authorized to execute and legally bind the parties they represent to this
23 AOC. No change in the ownership or corporate status of the Respondent or of the facility or Site
24 shall alter Respondent's responsibilities under this AOC.

25 5. The Respondent shall provide a copy of this AOC to any subsequent owners or
26 successors before ownership rights or stock or assets in a corporate acquisition are transferred.

1 Respondent shall provide a copy of this AOC to all contractors, subcontractors, laboratories, and
2 consultants which are retained to conduct any work performed under this AOC, within fourteen (14)
3 days after the effective date of this AOC or the date of retaining their services, whichever is later.
4 Respondent shall condition any such contracts upon satisfactory compliance with this AOC.
5 Notwithstanding the terms of any contract, Respondent is responsible for compliance with this AOC
6 and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents,
7 and attorneys comply with this AOC.

8 9 IV. STATEMENT OF PURPOSE

10 6. In entering into this AOC, the objectives of EPA and the Respondent are: (a) to
11 determine the nature and extent of contamination and any threat to the public health, welfare, or the
12 environment caused by the release or threatened release of hazardous substances, pollutants, or
13 contaminants at or from the Site or facility, by conducting an RI; (b) to determine and evaluate
14 alternatives for remedial action (if any) to prevent, mitigate, or otherwise respond to or remedy any
15 release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site
16 or facility, by conducting an FS; and (c) to recover response and oversight costs incurred by EPA
17 with respect to this AOC.

18 7. The activities conducted under this AOC are subject to approval by EPA and shall
19 provide all appropriate necessary information for the RI/FS, with the exception of the Baseline Risk
20 Assessment performed by EPA, and for a Record of Decision that is consistent with CERCLA and
21 the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 C.F.R. Part 300.
22 The activities conducted under this AOC shall be conducted in compliance with all applicable EPA
23 guidance, policies, and procedures.

24 25 V. FINDINGS OF FACT

26 8. The Upper Columbia River Site consists of the areal extent of contamination in the
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1 Upper Columbia River, and all suitable areas in proximity to the contamination necessary for
2 implementation of response action. The Upper Columbia River Site is the principal inflow to
3 Franklin D. Roosevelt Lake (Lake Roosevelt), the reservoir behind Grand Coulee Dam and
4 contributes about 90% of the flow from a large drainage area in Canada and the United States.
5 Approximately 15 river miles south of the U. S.-Canada border, the river becomes characteristic of a
6 lake/reservoir due to the Grand Coulee Dam.

7 9. The reservoir was developed into a major recreational and economic resource for
8 the surrounding area attracting more than one million visitors per year. Recreational use of the area
9 has been extensive including activities such as fishing, swimming, camping, and boating. The
10 Upper Columbia River and surrounding area is also habitat to wildlife, plants, a varied fish
11 community, and other aquatic species, including species listed under the Endangered Species Act
12 (ESA).

13 10. The Confederated Tribes of the Colville Indian Reservation (Colville Tribes) and
14 the Spokane Tribe of Indians (Spokane Tribe) own reservation lands along the Upper Columbia
15 River. The Colville Tribes and the Spokane Tribe have treaty-reserved rights and resources, and/or
16 other rights, interests, or resources in the Site. The Colville Tribes petitioned EPA in August 1999,
17 pursuant to Section 105 of CERCLA 42 U.S.C. § 9605, to conduct an assessment of hazardous
18 substance contamination along the Columbia River extending approximately 150 river miles from
19 the U.S.-Canada border to the Grand Coulee Dam.

20 11. EPA began conducting the site assessment in October 1999. EPA selected a Site
21 Assessment Area from approximately river mile 745 near the U.S.-Canada border to river mile 675.
22 This area is called the Upper Columbia River Site Assessment Area (Assessment Area). In
23 conducting the site assessment, EPA found contaminants at the Upper Columbia River Site
24 including, but not limited to, heavy metals such as arsenic, cadmium, copper, lead, mercury and
25 zinc. EPA did not conduct an analysis for dioxin and furan in the Assessment Area, though these
26 contaminants remain a concern. EPA also observed the presence of slag, a by-product of the

1 smelting furnaces, containing glassy ferrous granules and other metals, at beaches and other
2 depositional areas at the Assessment Area.

3 12. The Site has been the subject of numerous studies by various governmental
4 entities. Sources identified in these studies include releases from mining and milling operations,
5 fertilizer production, smelting operations, pulp and paper production, sewage treatment plants, and
6 other industrial activities.

7 13. Contaminants found at the Site are known to be toxic to humans and aquatic life.
8 Routes of human exposure to slag and contaminated sediment include direct contact with slag on the
9 beaches of the Upper Columbia River, contact with contaminated sediment during low draw down
10 periods, inhalation of airborne particles, dermal contact, and ingestion. There is also a concern of
11 human exposure from ingestion of lake/river water contaminated as a result of contact with slag or
12 contaminated sediments. Consumption of fish, aquatic resources, native plants, and agricultural
13 crops are also potential routes of human exposure.

14 14. Potential environmental effects of slag discharged to the Upper Columbia River
15 include both chemical (increased metal loads, potential bioaccumulation, toxicity problems in biota)
16 and physical (scouring of plants and animals from river substrates, severe erosion of fish gills,
17 smothering of habitat) components. Some benthic organisms can accumulate toxins that are
18 attached to sediment particles that the benthic organism ingests. Toxins accumulated in benthic
19 organisms can be transferred up the food chain to higher predators such as fish.

20 15. EPA completed its site assessment in March 2003. Pursuant to the Hazard
21 Ranking System, published as a federal regulation on December 14, 1990 (55 Fed. Reg. 51532), the
22 Site received a hazardous ranking score above 28.50, making the Site eligible for listing on EPA's
23 National Priorities List (NPL). Currently, the Site is being considered by EPA for possible inclusion
24 on the NPL.

25 16. Respondent owns and operates an integrated smelting and refining complex in
26 Trail, British Columbia (hereinafter referred to as the "Trail Smelter") situated approximately 10
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1 river miles north of the U. S.-Canada border. Respondent has arranged for the disposal of its
2 hazardous substances from the Trail Smelter into the Upper Columbia River by directly discharging
3 up to 145,000 tonnes of slag annually prior to mid-1995. Effluent, such as slag, is discharged into
4 the Columbia River through several outfalls at the Trail Smelter. The slag contains metals including,
5 but not limited to, copper, lead, and zinc. The slag was carried downstream in the passing river
6 current and settled in slower flowing quiescent areas.

7 17. The Trail Smelter facility also produces a variety of sulfur products and
8 agricultural fertilizers which represent a potential source of mercury. Historically, the Trail Smelter
9 discharged sulfur dioxide into the air increasing its discharge of sulfur dioxide from 4,700 tons a
10 month to 10,000 tons a month in 1925. Citizens of the town of Northport, Washington situated just
11 south of the U. S.-Canada border in the Columbia River valley, complained that pollution from the
12 Trail smelter was threatening their health and environment.

13 14 VI. CONCLUSIONS OF LAW AND DETERMINATIONS

15 18. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §
16 9601(9).

17 19. Wastes and constituents thereof at the Site, sent to the Site, disposed of at the
18 Site, and/or transported to the Site identified in Paragraphs 11 and 16 are "hazardous substances" as
19 defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute "any pollutant or
20 contaminant" that may present an imminent and substantial danger to public health or welfare under
21 Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

22 20. The presence of hazardous substances at the Site or the past, present, or potential
23 migration of hazardous substances currently located at or emanating from the Site, constitute actual
24 and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25 21. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. §
26 9601(21).

22. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

23. The actions required by this AOC are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

VII. NOTICE

24. By providing a copy of this AOC to the state, EPA is notifying the state of Washington that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VIII. WORK TO BE PERFORMED

25. All work performed under this AOC shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and before the work outlined below begins, the Respondent shall notify EPA, in writing, of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such work. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this AOC. If EPA disapproves, in writing, of any person(s)' technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS,

Respondent shall notify EPA, in writing, of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

26. Respondent shall conduct activities and submit deliverables as provided by the attached RI/FS Statement of Work, which is incorporated by reference, for the development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive # 9285.7-05) and guidance referenced therein, and guidance referenced in the Statement of Work, as may be amended or modified by EPA. The general activities that Respondent is required to perform are identified below, followed by a list of deliverables. The tasks that Respondent must perform are described more fully in the Statement of Work and guidance. The activities and deliverables identified below shall be developed as provisions in the Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided. All work performed under this AOC shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time. For the purposes of this Order, day means calendar day unless otherwise noted in the Order.

A. Task I: Scoping. EPA determines the Site-specific objectives of the RI/FS and devises a general management approach for the Site, as stated in the attached Statement of Work. Respondent shall conduct the remainder of scoping activities as described in the attached Statement of Work and referenced guidance. At the conclusion of the project planning phase, Respondent shall provide EPA with the following deliverables:

1. RI/FS Work Plan. Within two hundred ten (210) days of the effective date of this Order,

Respondent shall submit to EPA a complete RI/FS Work Plan. If EPA disapproves of or requires revisions to the RI/FS Work Plan, in whole or in part, Respondent shall amend and submit to EPA a revised Work Plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2. Sampling and Analysis Plan. Within two hundred ten (210) days of the effective date of this Order, Respondent shall submit to EPA the Sampling and Analysis Plan. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the Statement of Work and guidance. If EPA disapproves of, or requires revisions to, the Sampling and Analysis Plan, in whole or in part, Respondent shall amend and submit to EPA a revised Sampling and Analysis Plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

3. Site Health and Safety Plan. Within two hundred ten (210) days of the effective date of this Order, Respondent shall submit to EPA the Site Health and Safety Plan.

Following approval or modification by EPA, the RI/FS Work Plan and the Sampling and Analysis Plan are incorporated by reference herein.

B. Task II: Community Relations Plan. EPA will prepare a Community Relations Plan, in accordance with EPA guidance and the NCP. Respondent shall provide information supporting EPA's community relations programs.

When requested by EPA, Respondent also shall provide EPA with the following deliverable:

Technical Assistance Plan: Within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan (TAP) for providing and administering up to \$50,000 of Respondent's funds to be used by a qualified community group to hire independent technical advisors during the Work conducted pursuant to this Consent Order. The TAP shall state that Respondent will provide and administer any additional amounts needed if EPA, in its unreviewable discretion, determines that the selected community group has demonstrated such a need prior to EPA's issuance of the ROD contemplated by this Order. If EPA disapproves of or requires revisions

1 to the TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is
2 responsive to EPA's comments, within thirty (30) days of receiving EPA's comments.

3 C. Task III: Site Characterization. Following EPA approval or modification of the Work Plan and
4 Sampling and Analysis Plan, Respondent shall implement the provisions of these plans to
5 characterize the Site. Respondent shall complete Site characterization within twelve (12) months of
6 EPA approval or modification of the Work Plan and Sampling and Analysis Plan. Respondent shall
7 provide EPA with analytical data within fifteen (15) days of each sampling activity, in a electronic
8 format (i.e., computer disk) showing the location, medium, and results. Within seven (7) days of
9 completion of field activities, Respondent(s) shall notify EPA, in writing. During Site
10 characterization, Respondent shall provide EPA with the following deliverables, as described in the
11 Statement of Work and Work Plan:

12 1. Technical Memorandum on Modeling of Site Characteristics. Where Respondent
13 proposes that modeling is appropriate, within sixty (60) days of the initiation of Site
14 characterization, Respondent shall submit a technical memorandum on modeling of Site
15 characteristics, as described in the Statement of Work. If EPA disapproves of or requires
16 revisions to the technical memorandum on modeling of Site characteristics, in whole or in
17 part, Respondent shall amend and submit to EPA a revised technical memorandum on
18 modeling of Site characteristics which is responsive to the directions in all EPA comments,
19 within thirty (30) days of receiving EPA's comments.

20 2. Preliminary Site Characterization Summary. Within sixty (60) days of completion of the
21 field sampling and analysis, as specified in the Work Plan, Respondent shall submit a Site
22 characterization summary to EPA.

23 D. Draft Remedial Investigation Report Within sixty (60) days of receipt, Respondent shall submit
24 a draft remedial investigation report consistent with the Statement of Work, Work Plan, and
25 Sampling and Analysis Plan. If EPA disapproves of or requires revisions to the RI report, in whole
26 or in part, Respondent shall amend and submit to EPA a revised RI report which is responsive to the

1 directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

2 E. Task IV: Treatability Studies. Respondent shall conduct treatability studies, except where
3 Respondent can demonstrate to EPA's satisfaction that they are not needed. Major components of
4 the treatability studies include determination of the need for, and scope of, studies, the design of the
5 studies, and the completion of the studies, as described in the Statement of Work. During
6 treatability studies, Respondent shall provide EPA with the following deliverables:

7 1. Identification of Candidate Technologies Memorandum. This memorandum shall be
8 submitted within thirty (30) days of the effective date of this Order. If EPA disapproves of
9 or requires revisions to the technical memorandum identifying candidate technologies, in
10 whole or in part, Respondent shall amend and submit to EPA a revised technical
11 memorandum identifying candidate technologies which is responsive to the directions in all
12 EPA comments, within thirty (30) days of receiving EPA's comments.

13 2. Treatability Testing Statement of Work. If EPA determines that treatability testing is
14 required, within sixty (60) days thereafter [or as specified by EPA], Respondent shall submit
15 a treatability testing statement of work.

16 3. Treatability Testing Work Plan. Within thirty (30) days of submission of the Treatability
17 Testing Statement of Work, Respondent shall submit a Treatability Testing Work Plan,
18 including a schedule. If EPA disapproves of, or requires revisions to, the Treatability
19 Testing Work Plan, in whole or in part, Respondent shall amend and submit to EPA a revised
20 Treatability Testing Work Plan which is responsive to the directions in all EPA comments,
21 within thirty (30) days of receiving EPA's comments.

22 4. Treatability Study Sampling and Analysis Plan. Within thirty (30) days of the
23 identification of the need for a separate or revised QAPP or FSP, Respondent shall submit a
24 Treatability Study Sampling and Analysis Plan. If EPA disapproves of or requires revisions
25 to the Treatability Study Sampling and Analysis Plan, in whole or in part, Respondent shall
26 amend and submit to EPA a revised Treatability Study Sampling and Analysis Plan which is

responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within thirty (30) days of the identification of the need for a revised Health and Safety Plan, Respondent shall submit a Treatability Study Site Health and Safety Plan.

6. Treatability Study Evaluation Report. Within sixty (60) days of completion of any treatability testing, Respondent shall submit a Treatability Study Evaluation Report as provided in the Statement of Work and Work Plan. If EPA disapproves of or requires revisions to the Treatability Study Report, in whole or in part, Respondent shall amend and submit to EPA a Revised Treatability Study Report which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments.

F. Task V: Development and Screening of Alternatives. Respondent shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the Statement of Work and Work Plan. During the development and screening of alternatives, Respondent shall provide EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within thirty (30) days of receipt of EPA's Baseline Risk Assessment, Respondent shall submit a memorandum on remedial action objectives.

2. Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening. Within sixty (60) days of submittal of the memorandum on remedial action objectives, Respondent shall submit a memorandum summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the Statement of Work.

G. Task VI: Detailed Analysis of Alternatives. Respondent shall conduct a detailed analysis of remedial alternatives, as described in the Statement of Work and Work Plan. During the detailed analysis of alternatives, Respondent shall provide EPA with the following deliverables and

1 presentation:

2 1. Report on Comparative Analysis and Presentation to EPA. Within sixty (60) days of
3 submission of a memorandum on the development and screening of remedial alternatives,
4 Respondent shall submit a report on comparative analysis to EPA summarizing the results of
5 the comparative analysis performed between the remedial alternatives. If EPA disapproves
6 of or requires revisions to the report on comparative analysis, Respondent shall amend and
7 submit to EPA a revised report on comparative analysis which is responsive to the directions
8 in all EPA comments, within thirty (30) days of receiving EPA's comments. Within two (2)
9 weeks of submitting the original report on comparative analysis, Respondent shall make a
10 presentation to EPA during which Respondent shall summarize the findings of the RI and
11 remedial action objectives, and present the results of the nine criteria evaluation and
12 comparative analysis, as described in the Statement of Work.

13 2. Draft Feasibility Study Report. Within sixty (60) days of the presentation to EPA,
14 Respondent shall submit a Draft FS Report which reflects the findings in EPA's Baseline
15 Risk Assessment. Respondent shall refer to Table 6-5 of the RI/FS Guidance for report
16 content and format. If EPA disapproves of or requires revisions to the Draft FS Report, in
17 whole or in part, Respondent shall amend and submit to EPA a Revised FS Report which is
18 responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's
19 comments. The report, as amended, and the administrative record, shall provide the basis for
20 the Proposed Plan under CERCLA §§ 113(k) and 117(a) by EPA, and shall document the
21 development and analysis of remedial alternatives.

22 27. EPA reserves the right to comment on, modify, and direct changes for all
23 deliverables. At EPA's discretion, Respondent must fully correct all deficiencies and incorporate
24 and integrate all information and comments supplied by EPA either in subsequent or resubmitted
25 deliverables.

26 28. Respondent shall not proceed further with any subsequent activities or tasks until

1 receiving EPA approval for the following deliverables: RI/FS Work Plan, Sampling and Analysis
2 Plan, Draft RI Report, Treatability Testing Work Plan, and Sampling and Analysis Plan, and Draft
3 FS Report. While awaiting EPA approval on these deliverables, Respondent shall proceed with all
4 other tasks and activities which may be conducted independently of these deliverables, in
5 accordance with the schedule set forth in this AOC.

6 29. Upon receipt of the Draft FS Report, EPA will evaluate, as necessary, the
7 estimates of the risk to the public and environment that are expected to remain after a particular
8 remedial alternative has been completed.

9 30. For all remaining deliverables not enumerated above in Paragraph 28,
10 Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting
11 EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from
12 proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any
13 point during the RI/FS.

14 31. In the event that Respondent amends or revises a report, plan, or other submittal
15 upon receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if
16 subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek
17 stipulated or statutory penalties, perform its own studies, complete the RI/FS (or any portion of the
18 RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondent for its costs,
19 and/or seek any other appropriate relief.

20 32. In the event that EPA takes over some of the tasks, but not the preparation of the
21 RI/FS, Respondent shall incorporate and integrate information supplied by EPA into the Final RI/FS
22 Report.

23 33. Neither failure of EPA to expressly approve or disapprove of Respondent's
24 submissions within a specified time period(s), nor the absence of comments, shall be construed as
25 approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables,
26 Respondent is responsible for preparing deliverables acceptable to EPA.

1 34. Respondent shall, prior to any off-Site shipment of hazardous substances from
2 the Site to an out-of-state waste management facility, provide written notification to the appropriate
3 state environmental official in the receiving state and to EPA's Designated Project Coordinator of
4 such shipment of hazardous substances. However, the notification of shipments shall not apply to
5 any such off-Site shipments when the total volume of such shipments will not exceed ten (10) cubic
6 yards.

7 (a) The notification shall be in writing, and shall include the following information, where
8 available: (1) the name and location of the facility to which the hazardous substances are to be
9 shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected
10 schedule for the shipment of the hazardous substances; and (4) the method of transportation.
11 Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision
12 to ship the hazardous substances to another facility within the same state, or to a facility in another
13 state.

14 (b) The identity of the receiving facility and state will be determined by Respondent
15 following the award of the contract for the RI/FS. Respondent shall provide all relevant
16 information, including information under the categories noted in Paragraph 34(a) above, on the off-
17 Site shipments, as soon as practical after the award of the contract and before the hazardous
18 substances are actually shipped.

19 20 IX. EPA'S BASELINE RISK ASSESSMENT

21 35. EPA will perform the Baseline Risk Assessment. Respondent shall support EPA
22 in the effort by providing various information to EPA as outlined above. The major components of
23 the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity
24 assessment, and human health and ecological risk characterization.

25 36. EPA will provide, after review of the Respondent's Site characterization
26 summary, sufficient information concerning the baseline risks such that the Respondent can begin
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1 drafting the FS Report and the Memorandum on Remedial Action Objectives. This information will
2 normally be in the form of two or more Baseline Risk Assessment memoranda prepared by EPA.
3 One memorandum will generally include a list of the chemicals of concern for human health and
4 ecological effects and the corresponding toxicity values. Another should list the current and
5 potential future exposure scenarios, exposure assumptions, and exposure point concentrations that
6 EPA plans to use in the Baseline Risk Assessment. The public, including the Respondent, may
7 comment on these memoranda. However, the Agency is obligated to respond only to significant
8 comments that are submitted during the formal public comment period.

9 37. After considering any significant comments received, EPA will prepare a
10 Baseline Risk Assessment Report based on the data collected by the Respondent during the Site
11 characterization. EPA will release this report to the public at the same time it releases the Final RI
12 Report. Both reports will be put into the administrative record for the Site.

13 38. EPA will respond to all significant comments on the memoranda or the Baseline
14 Risk Assessment that are resubmitted during the formal comment period in the Responsiveness
15 Summary of the Record of Decision.

16 17 X. MODIFICATION OF THE WORK PLAN

18 39. If at any time during the RI/FS process, Respondent identifies a need for
19 additional data, a memorandum documenting the need for additional data shall be submitted to the
20 EPA Project Coordinator within twenty (20) days of identification. EPA, in its discretion, will
21 determine whether the additional data will be collected by Respondent and whether it will be
22 incorporated into reports and deliverables.

23 40. In the event of conditions posing an immediate threat to human health or welfare
24 or the environment, Respondent shall notify EPA and the state immediately. In the event of
25 unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project
26 Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or

changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan, in writing, accordingly. Respondent shall perform the Work Plan as modified or amended.

41. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Statement of Work for this RI/FS. EPA may require that the Respondent perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondent shall confirm its willingness to perform the additional work, in writing, to EPA within seven (7) days of receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondent shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan Supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

42. Respondent shall assure that work performed, samples taken, and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidance identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain-of-custody procedures.

XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, AND ADMINISTRATIVE RECORD

43. EPA retains the responsibility for the release to the public of the RI/FS Report.

EPA retains responsibility for the preparation and release to the public of the Proposed Plan and the

Record of Decision in accordance with CERCLA and the NCP.

44. EPA shall provide Respondent with the final RI/FS Report, Proposed Plan, and Record of Decision.

45. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent must submit to EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondent shall provide copies of plans, task memoranda, including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondent must additionally submit any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent may establish a community information repository at or near the Site, to house one copy of the administrative record.

XIII. PROGRESS REPORTS AND MEETINGS

46. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

47. In addition to the deliverables set forth in this Order, Respondent shall provide to EPA monthly progress reports by the tenth (10th) day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this AOC during that month; (2) include all results of sampling and tests and all other data received by the Respondent; (3) describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated

1 delays, and solutions developed and implemented to address any actual or anticipated problems or
2 delays.

3
4 XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

5 48. All results of sampling, tests, modeling, or other data (including raw data)
6 generated by Respondent, or on Respondent's behalf, during implementation of this AOC, shall be
7 submitted to EPA in the subsequent Monthly Progress Report as described in Section XIII of this
8 Order. EPA will make available to the Respondent validated data generated by EPA unless it is
9 exempt from disclosure by any federal or state law or regulation.

10 49. Respondent will verbally notify EPA at least fifteen (15) days prior to conducting
11 significant field events as described in the Statement of Work, Work Plan, or Sampling and Analysis
12 Plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent
13 shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any
14 samples collected by the Respondent in implementing this AOC. All split samples of Respondent
15 shall be analyzed by the methods identified in the QAPP.

16 50. At all reasonable times, EPA and its authorized representatives shall have the
17 authority to enter and freely move about all property at the Site and off-Site areas where work, if
18 any, is being performed, for the purposes of inspecting conditions, activities, the results of activities,
19 records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to
20 this Order; reviewing the progress of the Respondent in carrying out the terms of this AOC;
21 conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound
22 recording device, or other documentary type equipment; and verifying the data submitted to EPA by
23 the Respondent. The Respondent shall allow these persons to inspect and copy all records, files,
24 photographs, documents, sampling and monitoring data, and other writings related to work
25 undertaken in carrying out this AOC. Nothing herein shall be interpreted as limiting or affecting
26 EPA's right of entry or inspection authority under federal law. All parties with access to the Site

1 under this paragraph shall comply with all approved Health and Safety Plans.

2 51. The Respondent may assert a claim of business confidentiality covering part or
3 all of the information submitted to EPA pursuant to the terms of this AOC under 40 C.F.R. § 2.203,
4 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This
5 claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b), and substantiated at the
6 time the claim is made. Information determined to be confidential by EPA will be given the
7 protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is
8 submitted to EPA, it may be made available to the public by EPA or the state without further notice
9 to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data
10 related to Site conditions, sampling, or monitoring.

11 52. In entering into this Order, Respondent waives any objections to any data
12 gathered, generated, or evaluated by EPA, the state or Respondent in the performance or oversight
13 of the work that has been verified according to the quality assurance/quality control (QA/QC)
14 procedures required by the AOC or any EPA-approved Work Plans or Sampling and Analysis Plans.
15 If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a
16 report that identifies and explains its objections, describes the acceptable uses of the data, if any, and
17 identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen
18 (15) days of the monthly progress report containing the data.

19 53. If the Site, or the off-Site area that is to be used for access or is within the scope
20 of the RI/FS, is owned in whole or in part by parties other than those bound by this AOC,
21 Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present
22 owner(s) within sixty (60) days of the effective date of this AOC. Such agreements shall provide
23 access for EPA, its contractors and oversight officials, the state and its contractors, and the
24 Respondent or its authorized representatives, and such agreements shall specify that Respondent is
25 not EPA's representative with respect to liability associated with Site activities. Copies of such
26 agreements shall be provided to EPA prior to Respondent's initiation of field activities.

Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform those tasks or activities with EPA contractors, or terminate the AOC in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the AOC, Respondent shall perform all other activities not requiring access to that Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, the Respondent agrees to indemnify the U.S. Government as specified in Section XXVII of this Order. Respondent also shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondent pursuant to Paragraph 76.

XV. DESIGNATED PROJECT COORDINATORS

54. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this AOC, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent and EPA designate in writing:

(a) Documents to be submitted to EPA should be sent to [seven copies]:

Cami Grandinetti
EPA Project Coordinator
Environmental Cleanup Office
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Code ECL-113
Seattle, Washington 98101

(b) Documents to be submitted to the Respondent should be sent to [include number of copies]:

Name, Title,
Teck Cominco Metals Ltd.

P.O. Box 1000
Trail, British Columbia
Canada V1R 4L8

55. On or before the effective date of this AOC, EPA and the Respondent shall each designate their own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this AOC. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the state, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this AOC.

56. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified, in writing, at least ten (10) days prior to the change.

57. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority consistent with the NCP, to halt any work required by this AOC, and to take any necessary response action when he or she determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this AOC shall not be cause for the stoppage or delay of work.

58. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the Work Plan.

XVI. OTHER APPLICABLE LAWS

59. Respondent shall comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted

1 entirely on-Site, including studies, where such action is selected and carried out in compliance with
2 Section 121 of CERCLA, 42 U.S.C. § 9621.

3 4 XVII. RECORD PRESERVATION

5 60. All records and documents in EPA's and Respondent's possession that relate in
6 any way to the Site shall be preserved during the conduct of this AOC and for a minimum of ten (10)
7 years after commencement of construction of any remedial action. The Respondent shall acquire
8 and retain copies of all documents that relate to the Site and are in the possession of its employees,
9 agents, accountants, contractors, or attorneys. After this 10-year period, the Respondent shall notify
10 EPA at least ninety (90) days before the documents are scheduled to be destroyed. If EPA requests
11 that the documents be saved, the Respondent shall, at no cost to EPA, give EPA the documents or
12 copies of the documents.

13 14 XVIII. DISPUTE RESOLUTION

15 61. Any disputes concerning activities or deliverables required under this Order,
16 excluding the Baseline Risk Assessment, for which dispute resolution has been expressly provided
17 for, shall be resolved as follows: If the Respondent objects to any EPA notice of disapproval or
18 requirement made pursuant to this AOC, Respondent shall notify EPA's Project Coordinator, in
19 writing, of its objections within fourteen (14) days of receipt of the disapproval notice or
20 requirement. Respondent's written objections shall define the dispute, state the basis of
21 Respondent's objections, and be sent certified mail, return receipt requested. EPA and the
22 Respondent then have an additional fourteen (14) days to reach agreement. If an agreement is not
23 reached within fourteen (14) days, Respondent may request a determination by EPA's Director,
24 Environmental Cleanup Office (ECL). The ECL Director's determination is EPA's final decision.
25 Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute,
26 regardless of whether Respondent agrees with the decision. If the Respondent does not agree to

1 perform or does not actually perform the work in accordance with EPA's final decision, EPA
2 reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the
3 Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any
4 other appropriate relief.

5 62. Respondent is not relieved of its obligations to perform and conduct activities
6 and submit deliverables on the schedule set forth in the Work Plan, while a matter is pending in
7 dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this
8 Order.

9
10 XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

11 63. For each day that the Respondent fails to complete a deliverable in a timely
12 manner or fails to produce a deliverable of acceptable quality, or otherwise fails to perform in
13 accordance with the requirements of this Order, Respondent shall be liable for stipulated penalties.
14 Penalties begin to accrue on the day that performance is due or a violation occurs, and extend
15 through the period of correction. Where a revised submission by Respondent is required, stipulated
16 penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will provide
17 written notice for violations that are not based on timeliness; nevertheless, penalties shall accrue
18 from the day a violation commences. Payment shall be due within thirty (30) days of receipt of a
19 demand letter from EPA.

20 63. Respondents shall pay interest on the unpaid balance, which shall begin to accrue
21 at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30
22 U.S.C. § 3717. Respondents shall further pay a handling charge of one percent (1%), to be assessed
23 at the end of each thirty-one (31) day period, and a six percent (6%) per annum penalty charge, to be
24 assessed if the penalty is not paid in full within ninety (90) days after it is due.

25 64. Respondent shall make all payments by forwarding a check to:

26 U.S. Environmental Protection Agency
27 Superfund Accounting

P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

Checks should identify the name of the Site, the Site identification number, the account number, and the title of this Order. A copy of the check and/or transmittal letter shall be forwarded to the EPA Project Coordinator.

65. For the following major deliverables, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance; \$5,000 per day, per violation, for the 8th through 14th day of noncompliance; \$10,000 per day, per violation, for the 15th day through the 30th day; and \$20,000 per day per violation for all violations lasting beyond thirty (30) days.

- 1) An original and any revised Work Plan.
- 2) An original and any revised Sampling and Analysis Plan.
- 3) An original and any revised RI Report.
- 4) An original and any revised Treatability Testing Work Plan.
- 5) An original and any revised Treatability Study Sampling and Analysis Plan.
- 6) An original and any revised FS Report.

66. For the following interim deliverables, stipulated penalties shall accrue in the amount of \$300 per day, per violation, for the first week of noncompliance; \$750 per day, per violation, for the 8th through 14th day of noncompliance; \$2,500 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$5,000 per day per violation for all violations lasting beyond thirty (30) days.

- 1) Technical memorandum on modeling of Site characteristics.
- 2) Preliminary Site Characterization Summary.
- 3) Summary of RI data.
- 4) Identification of candidate technologies memorandum.
- 5) Treatability Testing Statement of Work.
- 6) Treatability Study Evaluation Report.

- 7) Memorandum on remedial action objectives.
- 8) Memoranda on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening.
- 9) Comparative analysis report.

67. For the Monthly Progress Reports, stipulated penalties shall accrue in the amount of \$200 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$1,000 per day, per violation, for the 15th day through the 30th day; and \$2,000 per day, per violation, for all violations lasting beyond thirty (30) days.

68. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall accrue, but need not be paid, during the dispute resolution period. If Respondent do not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

69. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

70. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this AOC, including, but not limited to, conduct of all or part of the RI/FS by EPA. Payment of stipulated penalties does not alter Respondent's obligation to complete performance under this AOC.

XX. FORCE MAJEURE

71. "Force Majeure," for purposes of this AOC, is defined as any event arising from causes entirely beyond the control of the Respondent and of any entity controlled by Respondent, including their contractors and subcontractors, that delays the timely performance of any obligation under this AOC notwithstanding Respondent's best efforts to avoid the delay. The requirement that

1 the Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any
2 potential Force Majeure event and best efforts to address the effects of any potential Force Majeure
3 event (1) as it is occurring, and (2) following the potential Force Majeure event, such that the delay
4 is minimized to the greatest extent practicable. Examples of events that are not Force Majeure
5 events include, but are not limited to, increased costs or expenses of any work to be performed under
6 this Order or the financial difficulty of Respondent to perform such work.

7 72. If any event occurs or has occurred that may delay the performance of any
8 obligation under this Order, whether or not caused by a Force Majeure event, Respondent shall
9 notify, by telephone, the Remedial Project Manager or, in his or her absence, the Director of the
10 Environmental Cleanup Office, EPA Region 10, within forty-eight (48) hours of when the
11 Respondent knew or should have known that the event might cause a delay. Within five (5) business
12 days thereafter, Respondent shall provide, in writing, the reasons for the delay, the anticipated
13 duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for
14 implementation of any measures to be taken to mitigate the effect of the delay, and a statement as to
15 whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to
16 public health, welfare, or the environment. Respondent shall exercise best efforts to avoid or
17 minimize any delay and any effects of a delay. Failure to comply with the above requirements shall
18 preclude Respondent from asserting any claim of Force Majeure.

19 73. If EPA agrees that the delay or anticipated delay is attributable to Force Majeure,
20 the time for performance of the obligations under this Order that are directly affected by the Force
21 Majeure event shall be extended by agreement of the parties, pursuant to Section XXVII of this
22 Order, for a period of time not to exceed the actual duration of the delay caused by the Force
23 Majeure event. An extension of the time for performance of the obligation directly affected by the
24 Force Majeure event shall not, of itself, extend the time for performance of any subsequent
25 obligation.

26 74. If EPA does not agree that the delay or anticipated delay has been or will be
27

1 caused by a Force Majeure event, or does not agree with Respondent on the length of the extension,
2 the issue shall be subject to the dispute resolution procedures set forth in Section XVIII of this
3 Order. In any such proceeding, to qualify for a Force Majeure defense, Respondent shall have the
4 burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has
5 been or will be caused by a Force Majeure event, that the duration of the delay was or will be
6 warranted under the circumstances, that Respondent did exercise or is exercising due diligence by
7 using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied
8 with the requirements of Paragraph 72.

9 75. Should Respondent carry the burden set forth in Paragraph 74, the delay at issue
10 shall be deemed not to be a violation of the affected obligation of this AOC.

11 12 XXI. REIMBURSEMENT OF PAST COSTS

13 76. Within fifteen (15) days of the effective date of this Order, Respondent shall
14 remit a certified or cashiers check to EPA in the amount of \$ 1,844,550, as previously demanded in
15 the RI/FS Special Notice Letter, dated October 10, 2003, together with interest that has accrued
16 thereon at the rate of interest specified for the Hazardous Substances Superfund under Section
17 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all past response costs incurred by the United States in
18 its conduct of assessment activities at the Site from March 22, 2000 to September 30, 2003.

19 77. Checks should be made payable to the Hazardous Substances Superfund and
20 should include the name of the Site, the Site identification number, the operable unit, if any, the
21 Regional Lock Box Number, account number, and the title of this Order. Checks should be
22 forwarded to:

23 U.S. Environmental Protection Agency
24 Superfund Accounting
25 P.O. Box 360903M
26 Pittsburgh, Pennsylvania 15251

27 78. A copy of the check should be sent simultaneously to the EPA Project
28 Coordinator.

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1 82. Copies of the transmittal letter and check should be sent simultaneously to the
2 EPA Project Coordinator.

3 83. Respondent agrees to limit any disputes concerning costs to accounting errors
4 and the inclusion of costs outside the scope of this AOC. Any disputes regarding payment of costs
5 shall be governed by the resolution procedures of Section XVIII of this Order. Respondent shall
6 identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by
7 Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by
8 Respondent into an escrow account while the dispute is pending. Respondent bears the burden of
9 establishing an EPA accounting error or the inclusion of costs outside the scope of this AOC.
10

11 XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

12 84. EPA reserves the right to bring an action against the Respondent under Section
13 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs including oversight costs,
14 incurred by the United States at the Site that are not reimbursed by the Respondent, any costs
15 incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred
16 by the United States in connection with response activities conducted under CERCLA at this Site.

17 85. EPA reserves the right to bring an action against Respondent to enforce the past
18 costs and response and oversight cost reimbursement requirements of this AOC, to collect stipulated
19 penalties assessed pursuant to Section XIX of this AOC, and to seek penalties pursuant to Section
20 109 of CERCLA, 42 U.S.C. § 9609.

21 86. Except as expressly provided in this Order, each party reserves all rights and
22 defenses it may have. Nothing in this AOC shall affect EPA's removal authority or EPA's response
23 or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated
24 penalties, statutory penalties, and/or punitive damages.

25 87. Following satisfaction of the requirements of this AOC, Respondent shall have
26 resolved its liability to EPA for the work performed by Respondent pursuant to this AOC.

1 Respondent is not released from liability, if any, for any response actions taken beyond the scope of
2 this Order regarding removals, other operable units, remedial design/remedial action of this operable
3 unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

4 5 XXIV. DISCLAIMER

6 88. By signing this AOC and taking actions under this Order, the Respondent does
7 not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the
8 participation of the Respondent in this Order shall not be considered an admission of liability and is
9 not admissible in evidence against the Respondent in any judicial or administrative proceeding other
10 than a proceeding by the United States, including EPA, to enforce this AOC or a judgment relating
11 to it. Respondent retains its rights to assert claims against other potentially responsible parties at the
12 Site. However, the Respondent agrees not to contest the validity or terms of this Order, or the
13 procedures underlying or relating to it in any action brought by the United States, including EPA, to
14 enforce its terms.

15 16 XXV. NATURAL RESOURCE DAMAGE ASSESSMENT PROVISION

17 For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon
18 issuance of this AOC for performance of an RI/FS at the Site, remedial action under CERCLA shall
19 be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be
20 commenced within 3 years after the completion of the remedial action.

21 22 XXVI. OTHER CLAIMS

23 90. In entering into this Order, Respondent waives any right to seek reimbursement
24 under Section 106(b) of CERCLA, 42 U.S.C. § 9696(b). Respondent also waives any right to
25 present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order does
26 not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA,

1 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims
2 against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out
3 of conduct of the RI/FS.

4 91. Nothing in this Order shall constitute or be construed as a release from any
5 claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary,
6 or corporation not a signatory to this AOC for any liability it may have arising out of, or relating in
7 any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any
8 hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

9 92. Respondent shall bear its own costs and attorneys fees.
10

11 **XXVII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

12 93. Respondent shall establish and maintain a financial instrument or trust account or
13 other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other
14 obligations required under this AOC, including a margin for cost overruns. Within fifteen (15) days
15 after the effective date of this AOC, Respondent shall fund the financial instrument or trust account
16 sufficiently to perform the work required under this AOC projected for the period beginning with the
17 effective date of the Order through December 31, 2003. Beginning January 1, 2004, and on or
18 before the 15th calendar day of each calendar year quarter thereafter, Respondent shall fund the
19 financial instrument or trust account sufficiently to perform the work and other activities required
20 under this Order projected for the succeeding calendar year quarter.

21 94. If at any time the net worth of the financial instrument or trust account is
22 insufficient to perform the work and other obligations under the Order for the upcoming quarter,
23 Respondent shall provide written notice to EPA within seven (7) days after the net worth of the
24 financial instrument or trust account becomes insufficient. The written notice shall describe why the
25 financial instrument or trust account is funded insufficiently and explain what actions have been or
26 will be taken to fund the financial instrument or trust account adequately.
27

1 95. (a) Prior to commencement of any work under this Order, Respondent shall
2 secure, and shall maintain in force for the duration of this Order, and for two (2) years after the
3 completion of all activities required by this AOC, Comprehensive General Liability ("CGL") and
4 automobile insurance, with limits of \$ five (5) million dollars, combined single limit, naming as
5 insured the United States. The CGL insurance shall include Contractual Liability Insurance in the
6 amount of \$ 1 million per occurrence, and Umbrella Liability Insurance in the amount of \$ 2 million
7 per occurrence.

8 (b) Respondent shall also secure, and maintain in force for the duration of
9 this Order and for two (2) years after the completion of all activities required by this AOC the
10 following:

- 11 i. Professional Errors and Omissions Insurance in the amount of \$ 1,000,000.00
12 per occurrence.
- 13 ii. Pollution Liability Insurance in the amount of \$ 1,000,000.00 per occurrence,
14 covering as appropriate both general liability and professional liability arising
15 from pollution conditions.

16 (c) For the duration of this Order, Respondent shall satisfy, or shall ensure
17 that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the
18 provision of employer's liability insurance and workmen's compensation insurance for all persons
19 performing work on behalf of the Respondent, in furtherance of this Order.

20 (d) If Respondent demonstrates by evidence satisfactory to EPA that any
21 contractor or subcontractor maintains insurance equivalent to that described above, or insurance
22 covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor
23 Respondent need provide only that portion of the insurance described above which is not maintained
24 by the contractor or subcontractor.

25 (e) Prior to commencement of any work under this Order, and annually
26 thereafter on the anniversary of the effective date of this Order, Respondent shall provide to EPA
27 certificates of such insurance and a copy of each insurance policy.

28 95. At least seven (7) days prior to commencing any work under this AOC,

Respondent shall certify to EPA that the required insurance has been obtained by that contractor.

96. The Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this AOC. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondent in carrying out activities under this AOC.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

97. The effective date of this AOC shall be the date it is signed by EPA.

98. This AOC may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the AOC.

99. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules, and attachments required by this AOC are, upon approval by EPA, incorporated into this Order.

XXVIX. TERMINATION AND SATISFACTION

100. This AOC shall terminate when the Respondent demonstrates, in writing, and certifies to the satisfaction of EPA that all activities required under this AOC, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall

1 not, however, terminate Respondent's obligation to comply with Sections XVII, XXI, and XXII of
2 this AOC.

3 101. The certification shall be signed by a responsible official representing the
4 Respondent. The representative shall make the following attestation: "I certify that the information
5 contained in or accompanying this certification is true, accurate, and complete." For purposes of this
6 AOC, a responsible official is a corporate official who is in charge of a principal business function.

7
8 BY: _____ DATE: _____

9 (Respondent)

Title

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14 BY: _____ DATE: _____

15 David Croxton, Unit Manager, Office of Environmental Cleanup

16 U.S. Environmental Protection Agency
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